



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,831	12/12/2003	Medford Alan Dyer	2023796-7037302001	1946

7590 04/19/2006

David G. Beck  
Bingham McCutchen, LLP  
Three Embarcadero Center, 18th Floor  
San Francisco, CA 94111

EXAMINER

HAROON, ADEEL

ART UNIT	PAPER NUMBER
----------	--------------

2618

DATE MAILED: 04/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/734,831		DYER, MEDFORD ALAN	
	<b>Examiner</b>		<b>Art Unit</b>	
	Adeel Haroon		2618	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-11 and 13-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Ban et al. (U.S. 6,985,592).

With respect to claim 1, Ban et al. disclose a controller compatible with a cell phone and an audio source with a controller housing, element numbers 3 and 4, and earphones, element numbers 5a and 5b, adapted to be coupled to the controller (Column 3, lines 7-16). Ban et al. also disclose an audio source cable, element number 1, and cell phone cable, element number 2, both coupled to the controller and to either an audio source or cell phone (Column 2, line 64 – Column 3, line 6). Ban et al. further disclose a switching means, element number 22, having a first and second positions wherein said cell phone is disconnected and said audio source is enabled when said

Art Unit: 2618

switching means is in said first position, and wherein said cell phone is connected and said audio source is disabled when said switching means is in said second position, wherein an audio signal from said audio source when said audio source is enabled is un-muted and coupled to said at least one earphone (Column 4, lines 24-36).

With respect to claim 2, Ban et al. disclose switching off the audio source from the earphones when the switching means is in the second position, which is interpreted as being muted (Column 4, lines 24-36).

With respect to claim 3, Ban et al. disclose disconnecting the audio source from the earphones when the switching means is in the second position (Column 4, lines 24-36).

With respect to claim 4, Ban et al. disclose that while the audio source is enabled, the ring from the cell phone is played, which is interpreted as a third switch position (Column 5, lines 7-25).

With respect to claims 5 and 6, Ban et al. disclose a pair of earphones, element numbers 5a and 5b, which can be interpreted as both in-the-ear and outside-the-ear earphones (Column 3, lines 40-51).

With respect to claims 7 and 8, Ban et al. disclose a microphone, element number 4, coupled the cell phone with a switch interposed between said microphone and said cell phone, wherein said switch has a first position in which said microphone is coupled to said cell phone and a second position in which said microphone is not coupled to said cell phone (Column 3, lines 28-39).

With respect to claims 9-11, Ban et al. disclose a volume controller, element numbers 17 and 18, interposed between the audio source/cell phone and earphones (Column 3, lines 38-41).

With respect to claims 13 and 14, Ban et al. disclose an audio source jack, element number 43; an audio source jack input, element number 40a; a cell phone jack, element number 44; and a cell phone jack input, element number 40b (Column 10, lines 45-50).

With respect to claim 15, Ban et al. disclose a controller compatible with a cell phone and an audio source with a controller housing, element numbers 3 and 4, and earphones, element numbers 5a and 5b, adapted to be coupled to the controller (Column 3, lines 7-16). Ban et al. also disclose an audio source cable, element number 1, and cell phone cable, element number 2, both coupled to the controller and to either an audio source or cell phone (Column 2, line 64 – Column 3, line 6). Ban et al. further disclose a switching means, element number 22, having a first and second positions wherein said control switch in said first position causes a cell phone switch to be in a first position and an audio source switch to be in a first position, wherein said control switch in said second position causes said cell phone switch to be in a second position and said audio source switch to be in a second position, wherein said cell phone switch in said first position connects said cell phone and said cell phone switch in said second position disconnects said cell phone, and wherein said audio source switch in said first position disables said audio source and said audio source switch in said second position enables said audio source, wherein an audio signal from said audio source

when said audio source is enabled is un-muted and coupled to said at least one earphone (Column 4, lines 24-36).

With respect to claim 16, Ban et al. disclose switching off the audio source from the earphones when the switching means is in the second position, which is interpreted as being muted (Column 4, lines 24-36).

With respect to claim 17, Ban et al. disclose disconnecting the audio source from the earphones when the switching means is in the second position (Column 4, lines 24-36).

With respect to claims 18 and 19, Ban et al. disclose a microphone, element number 4, coupled the cell phone with a switch interposed between said microphone and said cell phone, wherein said switch has a first position in which said microphone is coupled to said cell phone and a second position in which said microphone is not coupled to said cell phone (Column 3, lines 28-39).

With respect to claims 20 and 21, Ban et al. disclose a volume controller, element numbers 17 and 18, interposed between the audio source/cell phone and earphones (Column 3, lines 38-41).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

Art Unit: 2618

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ban et al. (U.S. 6,985,592) in view of Yang (U.S. 2005/0036644).

With respect to claim 12, the controller of Ban et al. is described above in the discussion of claim 1. Ban et al. teach the use of audio source and cell phone jacks and inputs (Column 10, lines 45-50) but do not expressly disclose an earphone jack and input. However, Yang discloses earphones connected to both a phone and audio device thus making it analogous art since it is in the same field of endeavor. Yang teaches the use of an earphone jack, element number 110, and input, element number 201, in figure 3 (Paragraph 26). Therefore, it would be obvious to one of ordinary skill in the art at the time of the applicant's invention to also include a earphone jack and input as taught by Yang in the controller of Ban et al. in order to make the earphones interchangeable.

### ***Conclusion***

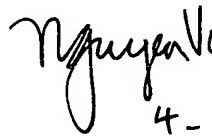
5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Young, III (U.S. 5,694,467), Ma (U.S. 2003/0076952), and Iglehart et al. (U.S. 6,091,812) all disclose various embodiments of earphones connectible to a phone and an audio source.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adeel Haroon whose telephone number is (571) 272-7405. The examiner can normally be reached on Monday thru Friday, 8:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nay Maung can be reached on (571) 272-7882. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AH  
4/10/06

  
4-16-2006

**NGUYEN T. VO**  
**PRIMARY EXAMINER**